

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Brian W. Pennick; Christine L. Pennick,) C/A; 2:14-144-RMG-BM
)
Plaintiffs,)
)
vs.) REPORT AND RECOMMENDATION
)
Wells Fargo Bank, N.A.; and U.S. Department)
of Housing and Urban Development, Federal)
Housing Administration,)
)
Defendants.)
)

This action was filed by Plaintiffs, pro se, pursuant to 28 U.S.C. § 1331. On February 21, 2014, it was recommended that this action be summarily dismissed without prejudice because an order of the Court was returned marked “return to sender, not deliverable as addressed, unable to forward,” such that neither the Court nor Defendants had any means of contacting Plaintiffs concerning this case. After Plaintiffs filed objections stating they did not receive the order, the report and recommendation was vacated and this action was returned to the undersigned Magistrate Judge for further proceedings. By order entered March 28, 2014, Plaintiffs were given a specific time frame in which to bring this case into proper form by providing summonses and USM-285 forms, answering the Court’s special interrogatories, and providing answers to Rule 26.01 interrogatories. Plaintiffs were specifically admonished that if they failed to provide the items specified within the period prescribed in the proper form order, the file would be forwarded to a United States District Judge to determine whether dismissal of the case was appropriate. See In re: Procedures in Civil Actions Filed by Prisoner Pro Se Litigants, No. 3:07-mc-5014-JFA.

Plaintiffs failed to provide any of the required documents, instead filing a motion for a temporary restraining order and a motion to stay. On May 2, 2014, the Honorable Richard Mark

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Gergel, United States District Judge, denied Plaintiffs' motion for a temporary restraining order and re-referred this action to the undersigned Magistrate Judge for further pretrial proceedings. By order entered June 24, 2014, Plaintiffs' motion to stay was denied, and Plaintiffs were given an additional twenty-one days to bring this action into proper form. Plaintiffs were again warned that if they failed to timely bring their case into proper form this action might be dismissed. Plaintiffs have again failed to comply with the Court's proper form order.

This case has been pending for over six (6) months, with Plaintiffs failing to complete the proper form process. No Defendant has been served. Based on the failure of Plaintiffs to comply with the Court's previous orders, and their filing of motions with the Court rather than simply complying with the Court's directives, it is recommended that this case be dismissed, without prejudice, for the failure of Plaintiffs to comply with this Court's Order or to properly prosecute their claims. See Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978); Chandler Leasing Corp. v. Lopez, 669 F.2d 919, 920 (4th Cir. 1982); Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989), cert. denied sub nom., Ballard v. Volunteers of Am., 493 U.S. 1084 (1990) [Magistrate judge's prior explicit warning that a recommendation of dismissal would result from the plaintiff failing to obey his order was proper grounds for the district court to dismiss suit when the plaintiff did not comply despite warning].

The parties are referred to the Notice Page attached hereto.

Bristow Marchant
United States Magistrate Judge

August 5, 2014
Charleston, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. An, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Scranch, 727 F.2d 91 (4th Cir. 1984).